

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221334 **DATE:** March 13, 1986
MATTER OF: Marquette Electronics, Inc.

DIGEST:

Protest that specification requiring electrocardiograph test results to be printed in 8-1/2- by 11-inch format unduly restricts competition is denied. The agency believes that it would be necessary to cut and paste 4-1/2-inch-wide printouts produced by the protester's equipment in order to fit them securely into standard 8-1/2- by 11-inch files, and that this would be inefficient and increase the risk of loss. The protester has not shown that the agency's position is clearly unreasonable.

Marquette Electronics, Inc., protests that a specification in request for proposals (RFP) No. DLA120-85-R-2763, issued by the Defense Personnel Support Center, Defense Logistics Agency (DLA), Philadelphia, Pennsylvania, is unduly restrictive of competition. The procurement is for 14 multichannel electrocardiographs (ECG) for the Navy's use. Marquette complains that the specification at issue is unduly restrictive because it only permits ECG test results to be printed in 8-1/2- by 11-inch paper format, a requirement which the protester's equipment does not meet. We deny the protest.

The equipment is used in naval hospitals and clinics worldwide. The ECG is required to be mounted on a mobile cart to permit the technician to move from patient to patient while performing the tests. Moreover, the technician stores accessory equipment on the cart as well as files for the patients to be tested. These patient files, which are standard-sized, are currently designed to accommodate 8-1/2- by 11-inch documents. In performing his duties, the technician wheels the cart to the patient's bedside and performs the test. Upon completion of the test, the technician removes the data printout from the ECG, secures it to the patient file, and disconnects the

equipment. This process is then repeated; all patient files are eventually returned to the central nursing station where the files are permanently maintained.

The RFP, as amended, contained the following specification:

"Hard copy of a standard 4 lead group recording must be automatically presented on 8 1/2 x 11 inch grid paper [and] must not require paper manipulation such as mounting or pasting."

Marquette contends that the requirement for 8-1/2- by 11-inch paper format is unduly restrictive of competition because it allegedly exceeds DLA's actual minimum needs. Marquette offers equipment which prints out a hard copy on a roll of gridded paper approximately 4-1/2 inches wide. For the standard 4 lead group, Marquette's equipment produces a copy that is approximately 4-1/2 by 11 inches in size.

A protester contending that a solicitation requirement is unduly restrictive has a heavy burden of proof. The contracting agency has broad discretion in determining its minimum needs and the best method of accommodating those needs. The Trane Co., B-216449, Mar. 13, 1985, 85-1 CPD ¶ 306. Where, as here, a protester challenges a specification as unduly restrictive of competition, the initial burden is on the procuring agency to establish prima facie support for its contention that the restrictions it imposes are necessary to meet its minimum needs. Once the agency establishes prima facie support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable. Polymembrane Systems, Inc., B-213060, Mar. 27, 1984, 84-1 CPD ¶ 354.

The agency states that its entire medical patient file system uses 8-1/2- by 11-inch records. This is why even the initial unamended solicitation, which was not protested by Marquette, required that the hard copy be "nominally 8 1/2 inches wide with a 4 group recording requiring approximately 8 1/2 X 11 inch of grid paper." Further, while the initial and the amended specification require 8-1/2- by 11-inch format only for a 4 group recording, the agency states that its actual minimum needs require that all printouts and all records be 8-1/2- by 11-inch size.

In this connection, the protester admits that its equipment, for certain tests involving more than a standard 4 lead group, presents the test results in a 4-1/2- by 22-inch format. Marquette does not dispute that in this situation, the hospital technician would have to cut and paste the paper to 8-1/2- by 11-inch format to fit the printouts into existing patient records. Moreover, although the protester disagrees, the agency states that even a 4 lead group (4-1/2- by 11-inch) recording from Marquette's equipment would have to be secured to an 8-1/2- by 11-inch record to permit filing without risk of loss.

DLA states that cutting and pasting or otherwise physically transforming Marquette's hard copy would increase the risk that essential patient information and records would be lost during the cutting process, which, at best, would be tedious and inefficient. Further, any significant risk of loss or error would compromise the accuracy of patient records and thereby also increase the risk of misdiagnosis and lawsuits. Finally, DLA reports that there are two other offerors remaining in the competition that offer equipment with 8-1/2- by 11-inch printout capability so that competition still exists even with the elimination of Marquette's equipment.

Although Marquette admits that its equipment's hard-copy printout would have to be stapled or otherwise altered to create an 8-1/2- by 11-inch record, it argues that its machine produces a printout in less time than other machines so that overall labor inefficiency does not necessarily result from use of its machine.^{1/} Marquette also contends that its printout shows a patient's name and other information so that the risk of loss of records is not increased by use of its equipment and that DLA has offered no support for its contention of increased risk of loss of records.

In our opinion, DLA has established prima facie support for the specification. We think that the agency reasonably determined that cutting, pasting, or otherwise transforming 4-1/2 inch-sized paper to 8-1/2- by 11-inch size would be necessary and would both increase the risk

^{1/} The agency disputes this and states that both types of equipment (producing 4-1/2- by 11-inch or 8-1/2- by 11-inch copies) print hard copies in 10 seconds.

of loss or misfiling of pertinent records and be inefficient.^{2/} This is especially so where, as here, numerous records of many different patients are involved. In light of this, the burden of proof therefore shifts back to the protester to show that this requirement is clearly unreasonable.

Marquette has not made such a showing. We are not persuaded that overall labor inefficiency and risk of record loss do not result from use of the protester's equipment. While Marquette believes that its 4-1/2-inch paper can efficiently and accurately be transferred into permanent larger-sized files without increased risk of loss and misfiling, this does not show that DLA's requirement is unreasonable. A mere difference of opinion between the protester and the agency over the agency's technical conclusions does not invalidate those conclusions. Stacor Corp., B-204364.2, Jan. 8, 1982, 82-1 CPD ¶ 24. Marquette therefore has failed to carry its burden of proof on this issue.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel

^{2/} The protester's own brochure for its other equipment, which offers 8-1/2- by 11-inch format capability, highlights this inefficiency. The brochure states that with the 8-1/2- by 11-inch format, the average cut and mount time of 4 minutes, 15 seconds, is saved and that "Mounting card costs [are] eliminated," resulting in "Lower ECG costs." (The protester states that it cannot offer this equipment because it does not meet certain other requirements of the RFP.)